IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Neil Gilmartin	)	
	)	Group Art Unit: 2142
Serial No.: 10/666,069	)	
	)	
Filed: September 19, 2003	)	Examiner: Recek, Jason D.
	)	
For: METHOD, SYSTEM AND COMPUTER PROGRAM PRODUCT FOR FACILATING THE DESIGN AND ASSIGNMENT OF ETHERNET VLANS	)	Confirmation No. 7662

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Commissioner for Patents
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REQUEST FOR PRE-APPEAL BRIEF CONFERENCE

In response to the Final Office Action mailed February 15, 2008, and in conjunction with the concurrently filed Notice of Appeal, Applicant requests a pre-Appeal conference in view of the following remarks.

REMARKS

In response to the final Office Action dated February 15, 2008, Applicant respectfully requests reconsideration based on the following remarks. Reconsideration and allowance of the claims are respectfully requested in view of the following remarks.

The specification was objected to as not supporting the "computer-readable medium" in claim 23. Paragraph [0035] of Applicant's specification teaches a computer-readable storage medium which supports claim 23. Claim 1 was objected to and claims 1-18 rejected under 35 U.S.C. § 112, second paragraph due to minor items which can be addressed through an after final amendment.

Claims 1, 16-17 and 19-23 were rejected under 35 U.S.C. § 103(a) as unpatentable over US Patent 5,684,800 to Dobbins (hereafter "Dobbins (800)") in view of IEEE Standard 802.1q (hereafter "IEEE 802"). This rejection is traversed for the following reasons.

Claim 1 recites, *inter alia,* "adding said new access port to an existing VLAN, if said searching results [i]n locating the existing VLAN, by: determining a list of shortest paths with capacity for said new access port." This feature is not taught by Dobbins (800). In applying Dobbins (800), the Examiner cites to column 3, lines 3-4 as allegedly teaching adding new access ports. This section does reference mapping access ports to VLAN-IDs. Further, column 6, lines 3-12 discusses auto-discovering end systems and mapping VLAN-IDs to end systems. Dobbins (800), however, fails to teach "determining a list of shortest paths with capacity for said new access port." There is no citation in the Office Action of where this feature is taught in Dobbins (800). IEEE 802 was relied upon for disclosing use of a class of service but fails to cure the deficiencies of Dobbins (800) as IEEE 802 does not teach determining a list of shortest paths with capacity for said new access port.

For at least the above reasons, claim 1 is patentable over Dobbins (800) in view of IEEE 802. Claims 16 and 17 depend from claim 1 and are patentable over Dobbins (800) in view of IEEE 802 for at least the reasons advanced with reference to claim 1. Claims 19 and 23 also recite "determining a list of shortest paths with capacity for said new access port" and are patentable over Dobbins (800) in view of IEEE 802 for at least the reasons advanced with reference to claim 1. Claims 20-22 depend from claim 19 and are patentable over Dobbins (800) in view of IEEE 802 for at least the reasons advanced with reference to claim 19.

Claims 2-3 were rejected under 35 U.S.C. § 103(a) as unpatentable over Dobbins (800) in view of IEEE 802 and Avargues. This rejection is traversed for the following reasons.

Avargues was relied upon for allegedly teaching "creating a list of least cost paths from said starting access port to each of said selected access ports, wherein each said path includes one or more of said switches and one or more of said trunks; and selecting a longest length path from said list for said base path." Avargues does teach finding a communication path through a network based on least cost, but does not teach "selecting a longest length path from said list for said base path." The Examiner cites to Avargues teaching selecting a link having the longest prefix matching answer (column 4, lines 8-15). The longest matching prefix relates to a phone number dialed by a user. This is described in column 8, line 63 – column 9, line 20 where a user dials 49752303. The system selects link L5 as the prefix for link L5 is 4975, and the prefix for link L4 is 49. Thus, the longest matching prefix in Avargues has nothing to do with a longest length path from said list of least cost paths, but rather with a link best matching a dialed phone number. Thus, Avargues fails to teach the features of claim 2.

For at least the above reasons, claim 2 is patentable over Dobbins (800) in view of IEEE 802 and Avargues. Claim 3 depends from claim 2 and is patentable over Dobbins (800) in view of IEEE 802 and Avargues for at least the reasons advanced with reference to claim 2.

Claims 4-7 were rejected under 35 U.S.C. § 103(a) as unpatentable over Dobbins (800) in view of IEEE 802 and Avargues and Gonda. This rejection is traversed for the following reasons.

Claim 4 recites "determining if each said least cost path in said list has capacity for said bandwidth requirement corresponding to said another of said access ports; and deleting a least cost path from said list in response to said least cost path not having capacity." Gonda broadly teaches that paths in an Ethernet network may have bandwidth requirements (paragraph [0053]) but does not teach deleting a least cost path as recited in claim 4. The Examiner states that "deleting a least cost path from said list in response to said least cost path not having capacity" would inherently be present in a system that required a path to meet a bandwidth requirement, if capacity was not present, the path would not be selected. This statement is flawed for multiple reasons. First, not selecting a path is not equivalent to deleting a path. Second, this feature is not inherent in Gonda as the doctrine of inherency is applied in patent law. As noted in MPEP §

2112, to establish inherency, "the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." In the present case, there is nothing "inherent" in Gonda that requires deletion of a least cost path. As noted by the Examiner, the least cost path could simply not be selected, which is not the same as deletion, and clearly is not inherent.

For at least the above reasons, claim 4 is patentable over Dobbins (800) in view of IEEE 802 and Avargues and Gonda. Claim 5 depends from claim 4 and is patentable over Dobbins (800) in view of IEEE 802 and Avargues and Gonda for at least the reasons advanced with reference to claim 4. Claims 6 and 7 were rejected for the same reasons as claims 4 and 5 and are patentable over Dobbins (800) in view of IEEE 802 and Avargues and Gonda for at least the reasons advanced with reference to claims 4 and 5.

Claims 8 and 11 were rejected under 35 U.S.C. § 103(a) as unpatentable over Dobbins (800) in view of Dobbins (772). This rejection is flawed as a matter of law. Claim 1 was rejected based on Dobbins (800) in view of IEEE 802. Claims 8 and 11 depend from claim 1 and cannot be rejected based on Dobbins (800) in view of Dobbins (772) without IEEE 802. Further, Dobbins (772) fails to teach " if there is more than one shortest length path then selecting the one resulting in a lowest total hub value for the VLAN for said new path." The section cited by the Examiner refers to selecting a shortest path based on metrics. There is no discussion in Dobbins (772) of using hub value when there is more than one shortest length path. Claim 11 recites how the hub value is computed in more detail, and these features simply are not present in Dobbins (772). The hub value in claims 8 and 11 is used when there is more than one shortest path length. The concept of what to do when there is more than one shortest path length is completely lacking in Dobbins (772). For at least the above reasons, claims 8 and 11 are patentable over Dobbins (800) in view of Dobbins (772).

Claims 9-10 and 12-13 were rejected under 35 U.S.C. § 103(a) as unpatentable over Dobbins (800) in view of Dobbins (772) and Gonda. This rejection is flawed as a matter of law. Claim 1 was rejected based on Dobbins (800) in view of IEEE 802. Claims 9-10 and 12-13 variously depend from claim 1 and cannot be rejected based on Dobbins (800) in view of

Dobbins (772) and Gonda, without IEEE 802. Further, as discussed above with reference to claim 4, Gonda does not teach "deleting a least cost path from said list in response to said least cost path not having capacity." Thus, claims 9-10 and 12-13 are patentable over Dobbins (800) in view of Dobbins (772) and Gonda.

Claims 14-15 were rejected under 35 U.S.C. § 103(a) as unpatentable over Dobbins (800) in view of Avargues. This rejection is flawed as a matter of law. Claim 1 was rejected based on Dobbins (800) in view of IEEE 802. Claims 14-15 depend from claim 1 and cannot be rejected based on Dobbins (800) in view of Avargues, without IEEE 802.

Claim 18 was rejected under 35 U.S.C. § 103(a) as unpatentable over Dobbins (800) in view of Zabihi. This rejection is flawed as a matter of law. Claim 1 was rejected based on Dobbins (800) in view of IEEE 802. Claim 18 depends from claim 1 and cannot be rejected based on Dobbins (800) in view of Zabihi, without IEEE 802.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. In the event the Commissioner of Patents and Trademarks deems additional fees to be due in connection with this application, Applicants' attorney hereby authorizes that such fee be charged to Deposit Account No. 06-1130.

If any extensions of time are required under 37 C.F.R. § 1.136, Applications hereby petition for such extensions of time and authorize any extension fees to be charged to Deposit Account No. 06-1130.

Respectfully submitted,

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